

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 18460
)	
[REDACTED],)	DECISION
)	
Petitioner.)	

On September 15, 2004, the Compliance Section of the State Tax Commission timely issued two Notices of Deficiency Determination to [Redacted], as a responsible officer of [Redacted]. Mr. [Redacted] hereinafter will be referred to as taxpayer. The first Notice asserted a penalty against the taxpayer for the unpaid withholding taxes for [Redacted]. in the amount of \$3,300.56 for the periods June, 2003, through February, 2004. The second Notice asserted the taxpayer was responsible for the unpaid sales and use tax and related penalty and interest for [Redacted]. in the amount of \$44,899.39 for the periods May of 2003 through January of 2004. On September 22, 2004, the taxpayer, through his legal representative, timely protested both Notices. An informal conference was held on September 22, 2005. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

In his protest letter, the taxpayer disputes the amount of the tax claims and the related penalty and interest. He also contends that the Commission will receive some of the claimed amounts through payment by the Chapter 7 bankruptcy trustee for [Redacted]. However, the liability for both the penalty for unpaid withholding and the sales tax amounts are based on actual filings made by [Redacted].

With respect to sales tax, Idaho Code § 63-3627 provides that, among other things, every person with the duty to account for or pay over taxes of a corporation is personally responsible

for the payment of the taxes, penalty, and interest of the corporation should the taxes not be paid by the corporation. The statute provides:

(a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable.

With respect to the withholding tax, Idaho Code § 63-3078 imposes a similar obligation on responsible parties. It provides:

Any person required to collect, truthfully account for and pay over any tax imposed by this title who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code.

The taxpayer does not contend he is not responsible for the unpaid taxes. He is the Vice President, Chairman, and Secretary of the corporation and owns five percent of the stock. He exercised some responsibility for the day-to-day decisions of the corporation. To be held responsible for the unpaid taxes on an entity such as a corporation, the individual must have significant authority in general management and fiscal decision making. *Bradshaw v. United*

States, 83 F.3d 1175 (10th Cir. 1995). Here, the taxpayer concedes that he had authority to act on behalf of the corporation.

As noted, the deficiency notices were based on the returns reported by the corporation. If the taxpayer believes these amounts are incorrect, he has the opportunity to provide any contrary evidence. The Notice of Deficiency is presumed to be correct, and the burden is on the taxpayer to prove he is not responsible for the taxes claimed due. *Riverside Development Company v. Vandenberg*, 137 Idaho 382, 48 P.3d 1271 (2002).

For these reasons, the Notices of Deficiency will be affirmed.

WHEREFORE, the Notices of Deficiency Determination dated September 15, 2004, are hereby APPROVED, AFFIRMED AND MADE FINAL .

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

Withholding Tax

<u>PERIOD</u>	<u>PENALTY</u>	<u>INTEREST</u>
June 2003	\$864.56	\$864.56
September 2003	\$1,033.00	\$1,033.00
December 2003	\$903.00	\$903.00
January 2004	\$314.00	\$314.00
February 2004	\$186.00	<u>\$186.00</u>
TOTAL DUE:		<u>\$3,300.56</u>

Sales Tax

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>CREDITS</u>	<u>BALANCE</u>
May 2003	\$3,387.44	\$846.86	\$479.82	\$0.00	\$4,714.12
June 2003	\$3,760.65	\$940.16	\$516.69	\$0.00	\$5,217.50
July 2003	\$4,598.81	\$1,149.70	\$613.02	\$0.00	\$6,361.53
August 2003	\$3,872.48	\$968.12	\$498.62	\$0.00	\$5,339.22
September 2003	\$2,771.09	\$692.77	\$346.21	\$0.00	\$3,810.07
October 2003	\$2,191.45	\$547.86	\$264.53	\$0.00	\$3,003.84
November 2003	\$5,362.59	\$1,099.27	\$623.73	\$0.00	\$7,085.59
December 2003	\$5,755.73	\$892.17	\$643.34	\$0.00	\$7,291.24
January 2004	\$2,797.07	\$293.79	\$298.33	\$0.00	\$3,389.19
TOTAL DUE:					<u>\$46,212.30</u>

Interest is calculated through November 30, 2005, and will continue to accrue at \$5.67 per day until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]
[REDACTED]

Receipt No.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
